THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.5468 OF 2006

Dated: 20-03-2006

BETWEEN

Rahmath Sultana,

W/o. Late Mohd. Mustafa,

Occ: Household,

R/o. 2-3-512/27/95/A,

Bapunagar, Amberpet,

Hyderabad.

...PETITIONER

AND

The District Collector,

Hyderabad District,

Nampally, Hyderabad

and another.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the second respondent in issuing proceedings No.B/64-65/2004 dated 03.03.2006 in respect of the property bearing M.C.H.No.2-3-512/27/95/A, Bapunagar, Amberpet, Hyderabad in Sy.No.153 as illegal and arbitrary.

Learned counsel for the petitioner submits that the father-in-law of the petitioner purchased

the land admeasuring 167.4 sq. meters (about 200 sq. yards) situated in Sy.No.153 of Amberpet Village and Mandal vide registered sale deed bearing document No.221/1980.
The father-in-law of the petitioner gifted the said property in favour of the husband of the petitioner, who filed a suit for declaration of title and the said suit was dismissed as not pressed. He further submits that the Government issued orders in G.O.Ms.No.455 Revenue (UCI) Department dated 29.07.2002 to regularize the surplus land under the Urban Land Ceiling Act. As the husband of the petitioner died on 28.02.2002, the petitioner applied for regularization of the said land by paying an amount of Rs.18,750/- in ULC file No.C.C.H2/8402 to 8409/76 in respect of S.Nos.149/P, 153/P and 154/P of Amberpet Village and Mandal. While the matter was in consideration in pursuance of the GO, the second respondent tried to encroach the property, hence, the petitioner filed a suit in O.S.No.1772 of 2004, which is still pending.

Learned counsel further submits that the petitioner is entitled for regularization and therefore, the proceedings initiated under Section 7 of the Land Encroachment Act, 1905 (for short 'the Act') is illegal and arbitrary.

Learned Government Pleader submits that the said land belongs to the Government and the same has been given to the Education Department for construction of school building for public purpose. Insofar as the contention of the petitioner that she paid an amount of Rs.18,750/- for regularization of her property pursuant to the aforesaid GO, it is stated that the said land is not a surplus land and the amount paid by the petitioner has already been refunded vide Memo No. 15230/UCI(3)/2004-1 dated 06.08.204 and the same has not been questioned.

After issuing notice under Section 7 of the Act and after considering the explanation of the petitioner dated 16.02.2006,
orders have been passed under Section 6 of the Act for eviction of the petitioner from the encroached portion of Government land. Admittedly, as against the said order an appeal lies to the District Collector under Section 10 of the Act.

In view of the aforesaid facts and circumstances of the case,
I am not inclined to admit the writ petition and it is accordingly dismissed with a liberty to the

petitioner to file an appeal before the District Collector within one week from the date of receipt of a copy of this order and if any such appeal is filed, pending disposal of the appeal, status quo obtaining as on today shall be maintained.

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V. ESWARAIAH, J

March 20, 2006

DSK